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Attorneys for Defendant Holiday Stationstores

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

SAVANNA EVERETT,) Cause No.
)
Plaintiff,)
)
vs.) DEFENDANT HOLIDAY
) STATIONSTORES'S NOTICE
HOLIDAY STATIONSTORES,) OF REMOVAL
)
Defendant.)
)

Defendant Holiday Stationstores (hereinafter “Defendant”), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446(b), *et seq.*, hereby removes this action to this Court.

The grounds for removal are as follows:

1. Plaintiff filed a civil action against Defendant Holiday Stationstores, in Montana Fourth Judicial District Court, Missoula County, Cause No. DV-21-1089,

on September 9, 2021, seeking unspecified monetary damages from the Defendant. A copy of the Missoula County District Court Case Register Report, dated October 5, 2021, a list of, and all processes, pleadings and orders served or filed in this action (with exception to the documents filed under seal) are attached and filed herewith.

See Exhibit 1.

2. Defendant, through its counsel, received a copy of the Complaint and Demand for Jury Trial as received for filing in state court, on September 13, 2021. Through counsel, Defendant Holiday Stationstores executed an *Acknowledgement and Waiver of Service* on or about September 16, 2021. A copy of the attachments to the Complaint that were filed under seal are attached hereto as *Exhibit 2*.

3. Upon information and belief, Plaintiff is and was at all times a resident of Missoula, Montana, making her a citizen of Montana.

4. Defendant Holiday Stationstores is and was at all relevant times a foreign corporation duly organized and existing under the laws of the State of Minnesota, and with its headquarters in Bloomington, Minnesota, making it a citizen of Minnesota pursuant to 28 U.S.C. § 1332(c)(1).

5. Based upon the allegations in the Complaint, as well as prior communications between the parties, the amount in controversy in this case exceeds \$75,000.

6. Defendant can demonstrate, by a preponderance of evidence, that the

amount in controversy for the claims exceeds the jurisdictional minimum. *See, Singer v. Allstate Mutual Automobile Insurance Co.*, 116 F.3d 373, 376 (9th Cir. 1997); *Sanchez v. Monumental Life Insurance Co.*, 102 F.3d 398, 403-4 (9th Cir. 1996). Pursuant to established case law, Defendant need not demonstrate the case value to a certainty. *Id.*

7. Plaintiff can avoid removal by utilizing available procedural devices in stating that all of the claims have a value of less than \$75,000 in a Notice or Statement of Damages and that Plaintiff will seek no more than \$75,000. *See §§ 25-4-313 and 25-4-314, MCA; Rollwitz v. Burlington Northern R.R.*, 507 F.Supp. 582, 588 (D. Mont. 1981) (“...if the plaintiff is to reserve the option of avoiding the federal forum, he must take the initiative and inform defendant of the amount being sought.”)

8. Removal of this case is permitted under 28 U.S.C. §1441(b) based upon complete diversity of citizenship and the fact the amount in controversy exceeds \$75,000.

9. Pursuant to 28 U.S.C. § 1441(a), and Rule 1.2(c)(2) of the Rules of Procedure of the United States District Court for the District of Montana, Missoula Division, this Court has jurisdiction and venue over this action because it embraces Missoula County, Montana.

10. This action is a civil action which may be removed by Defendant

Holiday Stationstores to the United States District Court for the District of Montana, pursuant to 28 U.S.C. §§ 1332 and 1441. The United States District Court has original jurisdiction over this cause.

11. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is filed with the Court within 30 days of service of process.

12. The Defendant will concurrently give written notice of this Notice of Removal to Plaintiff's counsel and the Montana Fourth Judicial District Court, Missoula County, pursuant to M.R.Civ.P. 77(e), by which act the above entitled cause is removed from such state district court to the above-captioned United States District Court. A copy of this written notice, without attachments, is attached hereto as ***Exhibit 3***.

13. The Civil Cover Sheet is attached hereto as ***Exhibit 4***.

WHEREFORE, Defendant Holiday Stationstores gives notice that Cause No. DV-21-1089, formerly pending in the Montana Fourth Judicial District Court, has been removed to the United States Court for Montana.

DATED this 5th day of October, 2021.

SPOON GORDON PC

By: /s/ Bryan L. Spoon
Bryan L. Spoon
Attorneys for Defendant
Holiday Stationstores

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 5th day of October, 2021, a true and correct copy of the foregoing was served upon the following as indicated:

1 E-File/E-Service

U.S. Mail
Hand Delivery
Email

1. Kathleen A. Molsberry
LOWY LAW, PLLC
103 South 5th Street East
Missoula, MT 59801
Attorneys for Plaintiff

SPOON GORDON PC

By: /s/ Bryan L. Spoon
Bryan L. Spoon
Attorneys for Defendant
Holiday Stationstores